

TECHNICAL ASSISTANCE - RESIDENCY WAIVER REQUEST

Prepared by the State Personnel Board in May 2002.

The Colorado Constitution gives the Board authority to grant a residency waiver in appropriate circumstances. The Colorado Constitution, Article XII, section 13(6), provides: "All appointees shall reside in the state, but applications need not be limited to residents of the state as to those positions found by the state personnel board to require special education or training or special professional or technical qualifications and which cannot be readily filled from among residents of this state." State Personnel Board Rule R-4-4 states that a department may request a residency waiver when it can show:

- The position(s) requires special education or training, or requires special professional or technical qualifications; and,
- There is an insufficient instate applicant pool; and
- The department cannot train and hire from within.

If the Colorado Unemployment index, or its equivalent, reflects an unemployment rate of **less than 3%, and a department's turnover rate for employees within the class series subject to the waiver request is greater than 10%**, the Board will apply a presumption in favor of a residency waiver for the position(s).

An applicant is a Colorado resident if he or she provides a Colorado address on the application. An applicant pool is usually sufficient if it contains three or more qualified applicants for the vacancy, plus one more qualified applicant for each additional vacancy. A department may be able to demonstrate an inability to fill the position from residents of the state even if there are three or more qualified applicants. For example, if the position is offered to those applicants and the offers are rejected, or if none of the qualified applicants is able to pass required background checks or physical examinations, then the department would be able to demonstrate that it is unable to fill the position from a pool of residents.

Pursuant to a Board Order dated January 18, 2001, in order for a department to receive a residency waiver, it must submit a residency waiver request to the Board Director that satisfies the above requirements. The residency waiver request must contain the following information:

- The special education or training required for the position;
- The special professional or technical qualifications required for the position;
- Reasons why the department contends it is unable to fill the position from among residents of the state, including why the applicant pool is insufficient and why it is not feasible to train and hire from within the department; and
- The department's turnover rate for employees within the position's class series.

The department should also include a description of the department's recruitment efforts and results for the position or class, with copies of any position announcements, advertisements, or contact letters. The department may also provide other information it wants the Board director to consider, such as copies of position announcements published in state and regional periodicals

and the period of time published; statewide open competitive announcements for a period of time; a copy of any postings on the state's job announcement web site; any special mailings to schools, groups, or professional associations; descriptions of any recruiting visits to schools or groups; and the turnover rate in the position's class series. The Division of Human Resources within Department of Personnel and Administration may be able to assist in obtaining statewide turnover rates for classes or class series. The Board Director will also consider information on the average turnover rate for similar jobs in the private sector. A small unit of several long-time employees who are now beginning to retire, resulting in a "high" turnover rate for the unit, will not necessarily meet the 10% turnover threshold.

A department may also submit additional background information to support its residency waiver request, such as:

- The official job description for the position;
- A description of how the position's duties are currently being accomplished and an explanation why they cannot continue to be accomplished in that manner;
- The official class description for the position; and
- Any special qualifications for the position.

The Board may grant a residency waiver requests for an individual position, a class, or class series. When a waiver is granted for a class or class series, it is typically granted for a specified time period with a provision to request an extension. After a residency waiver request is granted, the Board or Board Director may require that a department provide written reports to the Board.

If the Board director denies a residency waiver request, the Board will consider the request at its next regularly scheduled meeting.

An original and one copy of all information with regard to a residency waiver request should be sent to the State Personnel Board Director, 1120 Lincoln Street, Suite 1420, Denver, Colorado 80203.

- Q. A current employee will be living across the state border. Will this affect the employee's current employment with our department? Can we request a residency waiver?
- A. The residency requirement applies to current employees in the state personnel system. Nothing in the Constitution allows a waiver to address the housing needs of an individual employee. Residency waivers are only allowed for recruitment purposes as listed above. All appointees must be residents as long as they hold their appointment to a state position.

Every attempt is made to keep this technical assistance updated. For more detailed information, contact your agency human resources office or the State Personnel Board. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not legal advice.